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SIPDIS

STATE FOR EB/TPP/IPE BOGER  
STATE PLEASE PASS TO USTR FOR CHOE-GROVES  
COMMERCE FOR ITA/MAC/OIPR PETERS

SIPDIS

E.O. 12958: N/A  
TAGS: [KIPR](#) [ETRD](#) [ECON](#) [BO](#)  
SUBJECT: BELARUS SPECIAL 301 REVIEW

REF: A. 06 MINSK 195

[1](#)B. STATE 7944

[1](#)1. Summary and recommendation: Post once again recommends placement of Belarus on the watch list for 2007. Little has changed since Post's 2005 Special 301 input (ref A). Pirated optical media remains the norm, being readily available across the country, including in state-owned stores, and enforcement was minimal and impeded by deficiencies in Belarusian law. The GOB was sluggish in providing Post with even minimal information on TRIP compliance and enforcement. Nevertheless, recent GOB cooperation with the WIPO is noteworthy. End summary.

[1](#)2. Post will attempt to answer the questions presented in ref B. However, the GOB's main IPR body, the National Center for Intellectual Property Rights (NCIPR), failed to answer most of post's questions.

#### Optical Media Piracy

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[1](#)3. Optical media piracy remained the single largest type of IPR violation in Belarus during 2006. Pirated optical media is thenorm in Belarus. Dozens of kiosks and markets in Minsk and elsewhere in the country openly sell pirated media (software, DVDs and CDs) at low prices. Pirated media was routinely sold in state-owned stores. Although prices in Minsk for pirate DVD movies doubled over the year, from around 9,000 rubles (USD 4.5) to around 18,000 rubles (USD 9), many movies were available on DVD before they appeared in regional theaters. In some cases American movies were available on DVD in Belarus before being released in theaters in the U.S. An English-language version of "Children of Men" (2006), for example, was available on DVD nearly a month before its U.S. release.

[1](#)4. Several vendors, mainly the Minsk chain "Ministry of Sound," claimed to sell only licensed media. While post cannot comment whether they held to this, prices in these stores were certainly much higher than elsewhere in the country (for example, a new Madonna CD sells at the Ministry of Sound for BYR 55,000, or USD 25.60, compared to BYR 4,000/USD 1.86 at most other stores). Other major stores sold some older DVDS at prices comparable to U.S. retailers. For example, Poloff observed Harry Potter and the Prisoner of Azkaban" (2004) and "Derailed" (2005) on sale in two of Minsk's recently-opened hypermarkets and in "The Sixth Floor," a music shop widely-known to have sold pirated material in the past, for BYR 22,500 (USD 10.50). However, it is doubtful whether more expensive media meant legal media. In the same stores, Poloff also noted a DVD of the movie "The Guardian" (2006) was available in Minsk shortly after the movie was released in theaters in the U.S.

[1](#)5. The availability of pirated software and music also persists throughout Belarus. The latest Microsoft Windows and Office

versions were available for an average of 5,500 rubles (USD 2.75) in Minsk markets. Other expensive commercial software, such as Autocad, and popular computer games were available for the same price. Poloff also noted that the computer game "Civilization IV," which usually retails for USD 40 or more, was widely available for BYR 7,700 (USD 3.75). Regardless of content, music and software CDs generally sell for 8,000 rubles or less per disc. In February 2007, software industry sources estimated that counterfeit copies made up more than 90 percent of the software in use in Belarus.

Unsurprisingly, Microsoft representatives related to post that its software sales in Belarus are less than two percent of sales in Ukraine, despite the ubiquity of Microsoft software in Minsk stores.

Most of this pirated optical media is believed to be imported from the Moscow region of Russia, with smaller amounts coming from Ukraine.

#### Use/Procurement of Government Software

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¶16. There is no presidential edict or other regulation requiring government-purchased software to comply with international agreements. During the year Poloff spoke with representatives of domestic and foreign software companies who complained that the GOB generally will not pay for software licensing or technical support. They claim GOB officials do not understand why software is more expensive than hardware. Government officials have acknowledged that there is currently no law in Belarus recognizing software copyrights. Software companies hoping to prevent sales of pirated software in Belarus must make a specific application to stop the piracy with the government; post has no evidence of any such application being made during the year.

#### TRIPS Compliance

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¶17. In August 2005, the Council of Ministers passed Decree 871, "Confirming the Position on Interaction of Republican Organs of State Governance and Law Enforcement in the Realm of Intellectual Property," (the decree can be found, in Russian at [http://pravo.by/webnpa/text\\_txt.asp?RN=C20500](http://pravo.by/webnpa/text_txt.asp?RN=C20500) 871). This decree calls for various government organs to cooperatively enforce legislation on IPR protection. Specifically, it calls for joint action by the GOB on studying international IPR norms; conducting joint events and seminars; exchanging information and analysis; and carrying out joint checks for IPR violations. The decree also designates the IPR responsibilities for the Ministries of Architecture and Construction; Internal Affairs; Health; Information; Culture; Education; Industry; Communications; Agriculture; Trade; and Economy; as well as the State Committees on Science and Technology; Customs; Earth Resources, Geodesics and Cartography; Standards and Certifications; and law enforcement bodies.

¶18. In July 2006, the GOB reported to post that the Council of Ministers had drafted another decree, "Confirming the State Program for the Protection of Intellectual Property Rights in the Republic of Belarus for the Years 2007-2010." This decree was ostensibly aimed improving the effectiveness of IPR enforcement organs and strengthening IPR legal protections. However, Post knows of no new IPR-related legislation during 2006.

¶19. The NCIPR failed to provide most information to the questions in ref C, para 16 C, TRIPS Compliance. While the GOB did report in mid-2006 that customs authorities interdicted 135 IPR violations totaling BYR 113 million (USD 52,803) from 2004 to 2005, Post still waits for 2006 statistics on border seizures and investigations.

#### Enforcement

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¶10. According to official GOB statistics, Belarusian law enforcement uncovered 70 crimes under Article 201 of Belarus Criminal Code ("Violation of Authorship, Literary, Invention, and Patent Rights") and 436 administrative violations and seized more than 60,000 units of counterfeit audiovisual products. While credible sources reported that the number of raids increased in 2006, they tended to be aimed at small-scale retailers instead of production facilities. For example, opened in October 2004, the

Vigmaplast optical disc replication plant near Minsk continues to operate two lines with a capacity of seven million discs per year. Meanwhile, no official information on criminal proceedings or disposition of equipment resulting from the closure of the Brest Armita CD plant in August 2002 was provided during 2006.

¶11. Furthermore, GOB law enforcement remained hamstrung by several deficiencies in Belarusian law. First, border officials lacked ex officio authority to seize illegal material and to initiate their own investigations. Second, administrative agencies lacked ex officio authority to undertake investigations. Third, law enforcement agencies were not permitted to confiscate and destroy equipment used for the manufacture of pirated material. Fourth, such agencies were not authorized to conduct ex parte searches of end-user pirates. Fifth, there are no laws prohibiting the purchase or use of pirated software. Finally, the current anti-circumvention and copyright management information provisions of Belarus' 1998 Copyright Law do not conform to World Intellectual Property Organization (WIPO) digital treaties with respect to the manufacture, importation, sale, distribution, or other trafficking in devices or services that are designed to circumvent technological protection measures.

#### Treaties -----

¶12. Belarus has been a WIPO member since 1970 and is a party to all relevant IPR treaties, including the Berne Convention for the Protection of Literary and Artistic Works (1997), the WIPO Copyright Treaty (2002) and the WIPO Performances and Phonograms Treaty (2002), as well as a number of IPR agreements under the framework of the Commonwealth of Independent States. In its response to the 2006 Special 301, the GOB boasted that under Article 20 of Belarus' 2000 law, "On Normative Legal Acts," these international treaties had the "force of law" in Belarus. However, in many cases the GOB appeared unable or unwilling to comply with even the smallest WIPO recommendations. For example, in its 2006 answers to the "Questionnaire on the Implementation of Paragraph 12(a) of WIPO Standard ST.10/C," the NCIP admitted that it would not conform to the WIPO system of patent application numbering during first filings by the end of year. Moreover, NCIP failed to answer questions relating to its compliance with said system in certificates of priority.

#### Training -----

¶13. On a positive note, Belarusian cooperation with the WIPO appeared to improve significantly, particularly in the area of intellectual property (IP) education and training, since the GOB created the Training Center of Intellectual Property within the NCIPR in 2004 and the Interagency Advisory Board on IP Education in 2005. By September 2006, the WIPO reported that approximately 2,000 people had participated in IP seminars and workshops offered at the Training Center. [Note: During a visit to the U.S. in November 2006, Belarus' Head of High Technology Park Administration Valeriy Tsepkalo invited Tanya Shuster, Director of Business Information for

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the Newly Independent States of U.S. Department of Commerce, to attend a workshop on high-technology IPR protection at the Training Center. End note.]

¶14. In addition, WIPO noted that the GOB introduced courses in "Fundamentals of Intellectual Property Management" in higher education and specialized secondary-education institutions for the 2006/2007 academic year. Moreover, the WIPO lauded GOB cooperation during WIPO education and training conference that hosted 300 participants from 20 countries in Minsk between May 22 and 25. On February 1, 2007, while meeting with WIPO Director General Kamil Idris in Minsk, President Lukashenko announced plans to set up an IP center modeled after the WIPO Worldwide Academy in Geneva. Meanwhile, industry sources report Belarusian authorities are planning to hold an IP conference in May 2007 but have not determined the sponsors and participants.

Stewart